

Fair Political Practices Commission

To: Chairman Randolph; Commissioners Blair, Downey, Huguenin and Remy

From: Luisa Menchaca, General Counsel
Lawrence T. Woodlock, Senior Commission Counsel

Subject: Pending Litigation

Date: August 15, 2005

1. *California ProLife Council, Inc. v. Karen Getman et al.*

This action challenged the Act's reporting requirements for express ballot measure advocacy. In October 2000 the Federal District Court for the Eastern District of California dismissed certain counts and later granted the FPPC's motion for summary judgment on the remaining counts. Plaintiff appealed, and the Ninth Circuit Court of Appeal affirmed that the challenged statutes and regulations were not unconstitutionally vague, and that California may regulate ballot measure advocacy upon demonstrating a sufficient state interest in so doing. However, the Ninth Circuit remanded the matter back to the district court to determine whether California could in fact establish an interest sufficient to support its committee disclosure rules, and that those disclosure rules are properly tailored to that interest. On February 22, 2005 the court granted defendants' motion for summary judgment on these questions. Plaintiff has again appealed. The parties are now briefing the case, and expect that the appeal will be heard and decided early in the coming year.

2. *FPPC v. Agua Caliente Band of Cahuilla Indians, et al.*

The FPPC alleges in this action that the Agua Caliente Band of Cahuilla Indians contributed more than \$7.5 million to California candidates and ballot measure campaigns between January 1 and December 31, 1998, but did not timely file major donor reports disclosing those contributions, and likewise failed to disclose more than \$1 million in late contributions made between July 1, 1998 and June 30, 2002. The FPPC later amended the complaint to add a cause of action alleging that the tribe failed to disclose a \$125,000 contribution to the Proposition 51 campaign on the November 5, 2002 ballot. Defendants responded to the lawsuit by filing a motion to quash service, alleging that they could not be civilly prosecuted because of tribal sovereign immunity. On February 27, 2003 the Honorable Loren McMaster of the Sacramento County Superior Court ruled in the FPPC's favor. Defendants filed a petition for writ of mandate in the Third District Court of Appeal, challenging the decision of the trial court. The petition was summarily denied on April 24, 2003, whereupon defendants filed a petition for review in the California Supreme Court. On July 23, 2003, the Supreme Court granted review and transferred the case back to the Court of Appeal. On March 3, 2004, the Court of Appeal

affirmed the Superior Court's decision, concluding that "the constitutional right of the State to preserve its republican form of government trumps the common law doctrine of tribal immunity." On April 13, 2004, defendants filed a Petition for Review in the California Supreme Court. On June 23, 2004, the Supreme Court granted the Petition for Review. On September 23, 2004, the defendants filed an opening brief with the Supreme Court. On December 30, 2004, the FPPC filed its opposition brief. On April 1, 2005, defendants filed a closing brief. Amicus briefs have been filed by a number of interested parties.

3. FPPC v. Santa Rosa Indian Community of the Santa Rosa Rancheria

In this action the FPPC alleges that the Santa Rosa Indian Community of the Santa Rosa Rancheria failed to file major donor semi-annual campaign statements in the years 1998, 1999, and 2001, involving more than \$500,000 in political contributions to statewide candidates and propositions, and that defendants failed to disclose more than \$350,000 in late contributions made in October 1998. The complaint was originally filed on July 31, 2002, and was amended on October 7, 2002. On January 17, 2003, defendants filed a motion to quash service, based on its claim of tribal sovereign immunity. On May 13, 2003, the Honorable Joe S. Gray of the Sacramento County Superior Court entered an order in favor of defendants. On July 14, 2003, the FPPC appealed this decision to the Third District Court of Appeal, where the matter was scheduled for oral argument. The Attorney General filed an amicus brief in support of the FPPC's position. The court heard oral argument on October 19, 2004, and on October 27, 2004, issued a decision in favor of the Commission overturning the trial court's granting of defendant's motion to quash. The tribe filed a petition for review with California Supreme Court which was granted on January 12, 2005. However, any action on the case has been deferred pending the outcome of the Agua Caliente case.

4. California Republican Party, et al. v FPPC et al.

On October 12, 2004 the California Republican Party, the California Democratic Party, and the Orange County Republican Party filed a Complaint in the Federal District Court for injunctive and declaratory relief from two provisions of the Act, sections 84503 and 84506, which require a committee paying for ballot measure advertisements to identify their two highest contributors of \$50,000 or more. On October 20, 2004 plaintiffs amended their Complaint, and noticed a motion for Temporary Restraining Order to be heard on October 26, 2004. The FPPC filed its Opposition to this motion on October 22. The Attorney General's office represented the Commission at the hearing before the Honorable Frank C. Damrell, Jr. The next day, the Court issued a preliminary injunction enjoining the Commission from enforcing the provisions of the Act above against plaintiffs. Magistrate-Judge Peter Nowinski recently conducted two settlement conferences, on April 11 and May 2, 2005.

5. Citizens to Save California, et al. v. FPPC

On February 8, 2005, Citizens to Save California and Assembly Member Keith Richman filed a Complaint for injunctive and declaratory relief in Sacramento Superior Court challenging the Commission's adoption of regulation 18530.9 in June, 2005, which imposed on candidate-controlled ballot measure committees the contribution limit applied to the controlling candidate. Plaintiffs claim that the regulation violates the First Amendment, and that the Commission lacked statutory authority to adopt the regulation. Another group of plaintiffs led by Governor Schwarzenegger intervened in the action, and the court granted plaintiffs' motion for preliminary injunction, barring FPPC enforcement of regulation 18530.9 pending final disposition of the lawsuit. The Commission appealed, noting that the Superior Court's injunction was stayed while the appeal was pending. On April 25, the Superior Court determined that its injunction remained in effect, and a writ petition challenging this finding in the Court of Appeal was denied. Ruling next on the Commission's demurrer to the complaints, on May 26 Judge Chang indicated that further proceedings in the Superior Court were stayed pending resolution of the Commission's appeal of the preliminary injunction. The Court of Appeal has not yet set a briefing schedule. Meanwhile, TheRestofUs.org filed a lawsuit against the Governor, his California Recovery Team and Citizens to Save California, seeking a declaration that those committees are subject to the candidate contribution limits applicable to the Governor. Defendants filed a motion to dismiss and a motion for preliminary injunction, which were denied by Judge Chang on August 11, 2005. The Commission is not a party to this action.

6. *FPPC v. Democratic National Committee, Non-federal-Corporate et al.*

In a lawsuit filed in the Sacramento Superior Court on February 25, 2005, the FPPC alleges that a California campaign committee sponsored by the national Democratic Party committee, and the treasurers of that committee, failed to file a campaign statement disclosing \$1.2 million in contributions to the California Democratic Party. Defendants filed an answer to the complaint, and a cross-complaint against the FPPC seeking declaratory and injunctive relief. The cross-complaint alleges that Government Code section 83115.5 requires the FPPC to hold a probable cause conference prior to instituting a civil enforcement action against a prospective defendant. The cross-complaint also alleges that FPPC regulation 18361.8, which defendants interpret as eliminating the procedures for bringing a civil action, violates a respondent's right to due process. On May 5, 2005, the Commission filed a demurrer to the cross-complaint, which was affirmed without leave to amend at hearing on June 23, when the court concluded that due process did not require a probable cause conference prior to commencement of a civil action, nor any other proceedings beyond the protections afforded to all litigants. On July 7, 2005, the court issued its final order in the matter, dismissing the cross-complaint.

7. *Professional Engineers in California Government (PECG), et al. v. Secretary of State, et al.*

On August 2, 2005, plaintiffs served the FPPC and others with a writ of mandate and a complaint for declaratory filed in Sacramento Superior court. The primary purpose of the suit was to secure an injunction barring the Secretary of State and the State Printer from including a version of Proposition 75 in the voters' ballot pamphlet which differed from the written version circulated while gathering signatures to qualify the initiative for the November 8, 2005 ballot.

The text of Proposition 75, which would prohibit the use of public employees' union dues for political contributions without individual employees' prior consent, was to be delivered to the State Printer on August 15, 2005. The FPPC was named as a defendant because the proposed initiative would affect the Act if passed. On August 12, 2005, the Hon. Gail Ohanesian denied plaintiffs' request for injunctive and declaratory relief as to all parties and all causes of action.